## National Labor Relations Board



# Weekly Summary of NLRB Cases

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KSL DC Management, LLC d/b/a Hotel Del Coronado (21-CA-36119, 36195; 344 NLRB No. 35) Coronado, CA March 7, 2005. The Board granted the General Counsel's motion to strike the Respondent's exceptions document and granted its request for an extension of time to file an answering brief. [HTML] [PDF]

The Respondent filed 439 exceptions in a 131-page document and a separate brief of 49-1/2 pages in length. The vast majority of the exceptions contain arguments, i.e., the reasoning or facts that assertedly establish the exceptions. Section 102.46(b)(1) of the Board's Rules and Regulations states that each exception must contain certain information, including a concise statement of the grounds for the exception. That section of the Rules also notes that when a separate brief is filed, as the Respondent has done, the exceptions "shall not contain any argument . . . in support of the exceptions." Such argument is to be confined to the brief, which pursuant to Section 102.46(j) of the Rules shall not exceed 50 pages or other limit set by the Board. The Respondent's arguments in its exceptions, when combined with the 49-1/2 pages of brief, far exceed the 50-page limit.

As the Board's general policy is to provide the filing party an opportunity to resubmit the noncompliant documents in a form that comports with the Board's Rules, the parties were advised that should the Respondent desire to resubmit its exceptions and a brief in support that comply with the Board's Rules, such resubmission is due in Washington, DC by close of business March 17, 2005 and any answering brief to the resubmitted brief will be due March 31, 2005. It was noted that no extensions will be granted for the resubmissions.

(Chairman Battista and Members Liebman and Schaumber participated.)

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Hubert Distributors, Inc. (7-CA-31719(6); 344 NLRB No. 29) Detroit, MI March 7, 2005. The Board ordered that the Respondent pay the 338 individuals named in the Appendix the backpay and other reimbursable sums as shown in the Appendix, subject to the final, quarter-by-quarter calculation of interest, including the portion of the Respondent's voluntary payment attributable to interest. [HTML] [PDF]

The Respondent's obligation stems from a 1996 Board decision and order (322 NLRB 470, enfd. 145 F.3d 834 (6<sup>th</sup> Cir. 1998)). In November 2000, the Respondent made a "voluntary payment" directly to certain warehouse employees in the amount of \$423,922.28, as an offset to accrued backpay. The Regional Director apportioned the payment "into principal and interest that would have been due at the time the payment was made." The Regional Director then estimated the portion of the interim payment attributable to interest by applying to each quarterly backpay amount the interest rate from the fourth quarter of 1994, the "medium quarter" between the second quarter of 1991, and the second quarter of 1998.

The administrative law judge accepted the Regional Director's determinations and directed the Respondent to "pay the individuals named in the Appendix the indicated amounts of total gross backpay and other reimbursable sums for the period from April 15, 1991 to,

June 30, 1998, with interest." The Respondent contended that its entire interim payment should be treated as principal and that, even assuming the payment should be apportioned between principal and interest, the "median quarter" methodology is inconsistent with the Board's case law

The Board found that the judge correctly treated the payment as part principle and part interest because applying the entire interim payment to principal would ignore that interest had already accrued during the 9-year period before the payment was made and that the discriminates are entitled to the interest. It decided that the judge properly allowed for interest to be calculated, on the whole, on a quarter-by-quarter basis.

The Board clarified that the judge's recommended order imposes a requirement on the Regional Director to calculate the final amounts of backpay, other reimbursable amounts, and interest due the employees listed in the compliance specification, including the interest portion of the Respondent's voluntary payment, on a quarter-by-quarter basis, as required by the Board's case law. It adopted the judge's decision and recommended order subject to any alterations in the backpay amounts attributable to the final calculation.

(Chairman Battista and Members Liebman and Schaumber participated.)

Hearing at Detroit, June 17-20 and July 22-23, 2003. Adm. Law Judge Ira Sandron issued his supplemental decision Dec. 16, 2003.

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Seaport Printing & Ad Specialties Inc. d/b/a Port Printing Ad and Specialties (15-CA-17300; 344 NLRB No. 34) Lake Charles, LA March 7, 2005. In affirming the administrative law judge, the Board held that the Respondent violated Section 8(a)(5) and (1) of the Act by notifying Graphic Communications Workers Local 260 on December 19, 2003, that it wished to terminate the collective-bargaining agreement and that it was not interested in negotiating a new agreement; refusing as requested by the Union verbally on or about December 24, 2003, and by letter on January 13, 2004, to bargain with the Union, exclusive representative of unit employees; and refusing since December 19, 2003, and continuing thereafter, to recognize and bargain with the Union. [HTML] [PDF]

The judge relied on *Levitz Furniture Co. of the Pac*ific, 333 NLRB 717, 725 (2001), in determining that the Respondent unlawfully withdrew recognition from the Union. Chairman Battista and Member Schaumber noted that, although the judge correctly applied the "actual loss of majority" standard established in *Levitz*, they did not participate in *Levitz* and express no view as to whether it was correctly decided. Chairman Battista further found that the same result would be obtained in this case under the pre-*Levitz* standard of whether the Respondent harbored "good faith uncertainty" as to the Union's majority status.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Graphic Communications Workers Local 260; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Lake Charles on July 12, 2004. Adm. Law Judge John H. West issued his decision Aug. 26, 2004.

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Staten Island Cable LLC d/b/a Time Warner Cable of New York City and Electrical Workers IBEW Local 3 (29-CE-118; 344 NLRB No. 36) Staten Island, NY March 8, 2005. In agreement with the administrative law judge, the Board found that the Respondents violated Section 8(e) of the Act by entering into a collective bargaining agreement that included a union signatory clause, and by reaffirming and giving effect to that provision. [HTML] [PDF]

The judge's recommended order required, among others, the Respondent Employer to resume the subcontracting of work to Advantage Cable, and would also require the Respondents to inform Advantage Cable that they have no objection to such subcontracting. However, the Board concluded that to order Respondent Employer to resume the subcontracting of work to Advantage is inappropriate. They wrote: "The Act requires only that Respondent Time Warner not refuse, pursuant to an agreement with Respondent Local 3, to subcontract to Advantage Cable because Advantage is not signatory to a contract with Local 3. Insofar as the Act is concerned, Respondent Time Warner is free, based on other considerations, to resume that subcontract or not." Accordingly, the Board modified the judge's recommended order to conform with the Act's requirement.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by D.M. & M. Cable Services, Inc., d/b/a Advantage Cable; complaint alleged violation of Section 8(e). Hearing at Brooklyn on May 28, 2003. Adm. Law Judge Eleanor MacDonald issued her decision Sept. 17, 2003

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#### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Road & Rail Services, Inc. (Autoworkers [UAW] Local 604) St. Louis, MO March 7, 2005. 14-CA-27983, 28026; JD(ATL)-11-05, Judge George Carson II.

*Reliable Disposal, Inc.* (Teamsters Local 7) Stevensville, MI March 8, 2005. 7-CA-46874, 47389; JD(ATL)-10-05, Judge Pargen Robertson.

*Bantek West, Inc.* (Security Officers and Individuals) Atlanta, GA March 10, 2005. 10-CA-35136, et al.; JD(ATL)-12-05, Judge George Carson II.

Clear Channel Outdoor, Inc. (Electrical Workers [IBEW] Local 24) Laurel, MD March 10, 2005. 5-CA-31623, 31732; JD-16-05, Judge Arthur J. Amchan.

## LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

Aldworth Company, Inc., Lewiston, ME, 1-RC-21819, March 9, 2005 (Chairman Battista and Members Liebman and Schaumber)

Amsterdam Memorial Hospital, Amsterday, NY, Canajoharie, NY, 3-RD-1461, March 10, 2005 (Chairman Battista and Members Liebman and Schaumber) Willow Creek Assisted Living Wayne, LLC, Wayne, MI, 7-RC-22730, March 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

#### DECISION AND DIRECTION OF SECOND ELECTION

Walt Disney World Company, Lake Buena Vista, FL, 12-RC-8802, March 9, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board adopted Reports of Regional Directors or Hearing Officers in the absence of exceptions)

#### DECISION AND CERTIFICATION OF REPRESENTATIVE

*Liberty Ashes, Inc.*, Jamica, NY, 29-RC-10311, March 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

#### DECISION AND CERTIFICATION OF RESULTS OF ELECTION

Quikrete Northern California, Inc., Freemont, CA, 32-RC-5294, March 11, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Airway Cleaners, LLC, Rockville Centre, NY, 29-RC-10185, March 10, 2005 (Chairman Battista and Members Liebman and Schaumber) NGC Industries, Inc., Shippingport, PA, 6-RC-12414, March 10, 2005 (Chairman Battista and Members Liebman and Schaumber) *Teck Cominco Alaska, Incorporated*, Anchorage, AK, 19-RC-14625, March 10, 2005 (Chairman Battista and Members Liebman and Schaumber)

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#### Miscellaneous Decisions and Orders

### ORDER VACATING [Decision of March 4, 2005]

Barron Heating & Air Conditioning, Inc., Bellingham, WA, 19-RC-14429, March 9, 2005 (Chairman Battista and Members Liebman and Schaumber)

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